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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/597,448	06/20/2000	William S. Gatley	FASV-137-C1	6244

7590 08/19/2003

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EXAMINER

CIRIC, LJILJANA V

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 08/19/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/597,448

Applicant(s)
Gatley

Examiner
Ljiljana V. Ciric *AVC*

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Mar 18, 2003 and May 14, 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3, 5-8, and 10-12 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3, 5-8, and 10-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on May 14, 2003 is/are a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 18, 2003 has been entered.

Response to Amendment

2. This Office action is in response to the amendment and arguments filed on March 18, 2003 and to the supplemental response including a set of formal drawings filed on May 14, 2003.
3. Claims 3, 5 through 8, and 10 through 12 remain in the application, all as amended.

Response to Arguments

4. Applicant's arguments filed on March 18, 2003 with regard to the rejection of claims 3, 5 through 8, and 10 through 12 as being anticipated by *Connor et al.* as cited in the previous Office action have been fully considered but are moot in view of the new grounds of rejection presented herein.

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Applicant's arguments with regard to the rejections of the claims under the judicially created doctrine of obviousness-type double patenting and the related rejections of the claims under 35 U.S.C. 102(f) are not persuasive.

With regard to the latter, applicant argues that rejected claim 7 is directed to a system which includes at least one vent aperture, then goes on to suggest that the '311 reference is in contrast to this requirement because it discloses the motor housing as including both upper and lower apertures; the examiner notes that a recitation of "at least one aperture" in the claims of the instant invention does in no way preclude there being both upper and lower apertures.

Contrary to applicant's arguments, common assignment is not a prerequisite to the application of the judicially created doctrine of obviousness-type double patenting, nor does the fact that the instant application is earlier-filed than the applied patents having the same inventive entity preclude the applicability of a double patenting rejection. Furthermore, merely stating for the record without a proper declaration that the '311 patent and the present application were both commonly owned at the time of invention of the present invention is not persuasive.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

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Requirement for Information

5. Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.
6. In response to this requirement, please provide the names of any products or services that have incorporated the claimed subject matter.
7. In response to this requirement, please provide copies of each publication which the applicant authored or co-authored and which describe the disclosed subject matter of the elected first species of the instant invention.
8. In response to this requirement, please provide a complete list of all related patents and patent applications, both pending and abandoned ones, and including all related applications where applicant is a listed co-inventor.
9. The fee and certification requirements of 37 CFR 1.97 are waived for those documents submitted in reply to this requirement. This waiver extends only to those documents within the scope of this requirement under 37 CFR 1.105 that are included in the applicant's first complete communication responding to this requirement. Any supplemental replies subsequent to the first communication responding to this requirement and any information disclosures beyond the scope

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of this requirement under 37 CFR 1.105 are subject to the fee and certification requirements of 37 CFR 1.97.

10. The applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56. Where the applicant does not have or cannot readily obtain an item of required information, a statement that the item is unknown or cannot be readily obtained will be accepted as a complete reply to the requirement for that item.

11. This requirement is an attachment of the enclosed Office action. A complete reply to the enclosed Office action must include a complete reply to this requirement. The time period for reply to this requirement coincides with the time period for reply to the enclosed Office action.

Drawings

12. The corrected formal drawings filed on May 14, 2003 have been approved by the examiner.

Claim Objections

13. Claims 3, 5 through 8, and 10 through 12 are objected to because of the following informalities: “for” should be inserted immediately preceding “cooling a motor” [claim 3, line 2]; and, “at least one” should be inserted immediately preceding “vent aperture” [claim 3, line 10; claim 7, lines 7-8; claim 7, line 12; claim 7, line 18]; . Appropriate correction is required.

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Claim Rejections - 35 U.S.C. § 102

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

(f) he did not himself invent the subject matter sought to be patented.

NOTE: The above reflects changes made to 35 U.S.C. 102(e) by the American Inventors

Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002.

15. Claims 3, 5, 7, 8, 11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by *Jyoraku et al.*

Jyoraku et al. discloses a blower fan assembly essentially as claimed. For example, *Jyoraku r et al.* discloses: a motor 15 with a motor housing 1 including at least one vent aperture or opening 6a [see Figure 1] for allowing external cooling air to enter the motor housing 1; an

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impeller or blower housing or end casing 35 mounted or secured to the motor housing enclosing space 13 [see Figures 1 and 2], the impeller or blower housing or end casing 35 including an inlet port or flow passage 47 between the motor housing and the impeller housing or end casing 35; an impeller or blower fan 20 enclosed within the impeller or blower housing or end casing 35 and mounted to motor shaft 16, the impeller or blower fan 20 having a back plate or fan disc 41 and a plurality of fins or vanes, wherein the back plate or fan disc 41 includes a plurality of apertures or openings corresponding to the inlet openings to flow passages 47 as shown in Figures 1 and 2.

The reference thus reads on the claims.

16. Claims 7, 11, and 12 are rejected under 35 U.S.C. 102(f)/103(a) because the applicant did not invent the claimed subject matter. Specifically, claims 7, 11, and 12 are directed to an invention not patentably distinct from that of claims 1, 3, 14, 16, 18, and 25 of commonly assigned *U.S. Patent No. 6,231,311 B1 (of record)*, yet *U.S. Patent No. 6,231,311 B1* has a different inventive entity from that of the instant invention.

Double Patenting

17. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed.

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Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

18. Claims 7, 11, and 12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3, 14, 16, 18, and 25 of *U.S. Patent No. 6,231,311 B1 (of record)*. Although the conflicting claims are not identical, they are not patentably distinct from each other because the only differences between the claims of the instant application and those of the abovementioned patent are the following: (a) the application claims recite an impeller having a plurality of fins (i.e., airfoils or blades), whereas the patent claims more broadly recite just an impeller which, by definition, comprises at least one fin (i.e., airfoil or blade); (b) the application claims recite the backplate as having a plurality of apertures, whereas the patent claims recite the backplate as having at least one aperture (i.e., one or more apertures);

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and, (c) the application claims recite the blower assembly as being devoid of an auxiliary cooling fan whereas the patent claims are silent on this matter. Nevertheless, both duplicating parts (i.e., fins or apertures) for a multiplied effect is not the type of innovation for which a patent monopoly is to be granted and elimination of an element and its function where not needed is obvious absent a showing of unexpected results. Thus, it would have been obvious to one skilled in the art at the time of invention to both to change the number of fins (i.e., blades or airfoils) of an impeller in order to effect a desired change in the working surface area of the impeller so as to effect the performance of the impeller in a given desired manner and also to change the number of apertures in the backplate in order to cause a corresponding desired change in the cooling air flow rate therethrough. It would have been similarly obvious to one skilled in the art at the time of invention to eliminate an auxiliary cooling fan if the need for the same was eliminated via the inventive specific motor housing cooling structure.

19. Claims 7, 11, and 12 are directed to an invention not patentably distinct from claims 1, 3, 14, 16, 18, and 25 of commonly assigned *U.S. Patent No. 6,231,311 B1 (of record)*. Specifically, the claims are not patentably distinct from each other because the only differences between the claims of the instant application and those of the abovementioned patent are the following: (a) the application claims recite an impeller having a plurality of fins (i.e., airfoils or blades), whereas the patent claims more broadly recite just an impeller which, by definition,

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comprises at least one fin (i.e., airfoil or blade); (b) the application claims recite the backplate as having a plurality of apertures, whereas the patent claims recite the backplate as having at least one aperture (i.e., one or more apertures); and, (c) the application claims recite the blower assembly as being devoid of an auxiliary cooling fan whereas the patent claims are silent on this matter. Nevertheless, duplicating parts (i.e., fins or apertures) for a multiplied effect is not the type of innovation for which a patent monopoly is to be granted. Thus, it would have been obvious to one skilled in the art at the time of invention to both to change the number of fins (i.e., blades or airfoils) of an impeller in order to effect a desired change in the working surface area of the impeller so as to effect the performance of the impeller in a given desired manner and also to change the number of apertures in the backplate in order to cause a corresponding desired change in the cooling air flow rate therethrough. It would have been similarly obvious to one skilled in the art at the time of invention to eliminate an auxiliary cooling fan if the need for the same was eliminated via the inventive specific motor housing cooling structure.

20. The U.S. Patent and Trademark Office normally will not institute an interference between applications or a patent and an application of common ownership (see MPEP § 2302).

Commonly assigned *U.S. Patent No. 6,231,311 B1 (of record)*, discussed above, would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned case qualifies as prior art under 35 U.S.C. 102(f) or (g) and the conflicting inventions were not

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commonly owned at the time the invention in this application was made. In order for the examiner to resolve this issue, the assignee is required under 37 CFR 1.78(c) and 35 U.S.C. 132 to either show that the conflicting inventions were commonly owned at the time the invention in this application was made or to name the prior inventor of the conflicting subject matter. *Failure to comply with this requirement will result in a holding of abandonment of the application.*

A showing that the inventions were commonly owned at the time the invention in this application was made will preclude a rejection under 35 U.S.C. 103(a) based upon the commonly assigned case as a reference under 35 U.S.C. 102(f) or (g), or 35 U.S.C. 102(e) for applications filed on or after November 29, 1999.

21. Claims 3, 5 through 8, and 10 through 12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2 and 20 of *U.S. Patent No. 6,296,478 B1* in view of *Connor et al. (previously of record)*. Although the conflicting claims are not identical, they are not patentably distinct from each other because the only difference between the claims of the instant application and those of the abovementioned patent is that the claims of the instant application additionally recite at least one aperture in a back plate of the fan impeller such that cooling air can pass through the same or the step of forming at least one such aperture. Nevertheless, *Connor et al.* teaches providing at least one pressure opening or aperture in the back plate of the impeller of a furnace exhaust fan or blower in order to ensure

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proper operation of the exhaust fan and to prevent the build up of combustible gases in the furnace. It would thus have been obvious to one skilled in the art at the time of invention to modify the invention disclosed in claims 2 and 20 of *U.S. Patent No. 6,296,478 B1* by adding at least one opening or aperture to the back plate of the exhaust fan impeller in order to facilitate proper operation thereof. *U.S. Patent No. 6,296,478 B1* discloses a single impeller or fan 30, with no auxiliary cooling fan.

22. Claims 3, 5, and 6 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 through 14 of *U.S. Patent No. 6,318,358 B1*. Although the conflicting claims are not identical, they are not patentably distinct from each other because the only differences between the claims of the instant application and those of the abovementioned patent are the following: (a) the patent claims broadly recite the motor casing as being in communication with the blower housing, whereas the application claims recite the impeller housing as being mounted or secured to the motor housing; and, (b) the application claims recite the backplate as having a plurality of apertures for drawing cooling air therethrough, whereas the patent claims recite the backplate as having one aperture (i.e., the shaft hole with the perimeter edge spaced from but adjacent to the motor shaft to allow the cooling air to flow therethrough). Nevertheless, with regard to the latter, duplicating parts (i.e., holes or apertures) for a multiplied effect is not the type of innovation for which a patent monopoly is to be granted.

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Thus, it would have been obvious to one skilled in the art at the time of invention to change the number of apertures or holes in the backplate in order to cause a corresponding desired change in the cooling air flow rate therethrough. With regard to the former, directly or indirectly mounting or securing the impeller housing to the motor housing or casing is an obvious design variation of ensuring that the two housings, each with a corresponding aperture, are in flow communication with one another. Generally, rearrangement of parts is also not innovative unless unexpected results are obtained thereby. Thus, it would have similarly have been obvious to one skilled in the art at the time of the invention to mount or secure the impeller housing to the motor housing or casing in order to ensure that the corresponding flow apertures are properly aligned to allow cooling air flow to pass therethrough with minimal obstruction, for example. While *U.S. Patent No. 6,318,358 B1* discloses a single fan with two blades 74 and 76, it does not disclose an auxiliary cooling fan in the motor housing for cooling the motor housing.

Conclusion

23. The following additional prior art made of record and not relied upon is considered pertinent to applicant's disclosure. *Shieh, Murata et al., King, Morelli, Matsumoto, Hufstader, Toyoshima et al., Muszynski, Bercot et al., Beckey et al., James, Veser et al., Umeda et al., Hoehn, and Morgan* each discloses a blower-motor assembly of interest.

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24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ljiljana (Lil) V. Ciric, whose telephone number is (703) 308-3925. While she works a flexible schedule that varies from day to day and from week to week, Examiner Ciric may generally be reached at the Office during the work week between the hours of 10 a.m. and 6 p.m. ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett, can be reached on (703) 308-0101. The fax phone number is (703) 305-3463.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

lvc

July 26, 2003


LJILJANA V. CIRIC
PRIMARY EXAMINER
ART UNIT 3743